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"Combating Modern Slavery: Reauthorization of Anti-Trafficking Programs"
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Chairman Conyers, Members of the House Judiciary Committee, fellow anti-trafficking advocates: I am grateful for this opportunity to address the subject of how the Trafficking Victims Protection Act can become a more effective vehicle to prosecute traffickers engaging in the sexual slavery of women and girls. I speak as the Director of Sanctuary for Families' Center for Battered Women's Legal Services. Founded in 1988, the Center is the largest legal services program for domestic violence victims in the United States and, since the mid 1990's, has been providing legal services to a growing number of victims of sex trafficking. Since 2005, Sanctuary for Families has been one of the lead organizations of the New York State Anti-Trafficking Coalition, which successfully fought for the passage of a strong and comprehensive anti-trafficking law in New York State. That law goes into effect today.

I am also speaking as the Founding Board Member of the Coalition Against Trafficking in Women, a non-governmental organization working since 1988 to end all forms of trafficking in women and girls into prostitution and related forms of commercial sexual exploitation. The Coalition is made up of networks in Asia, Latin America, Africa, Europe, North America, and Australia that work to prevent the sex industry's exploitation and abuse of women and girls, to protect its victims, and to prosecute and punish all those involved in this brutal trade.

The Coalition has conducted pioneering research into the trafficking of women, including the first comprehensive study of sex trafficking into the United States, funded by the National Institute of Justice. The Coalition has funded and assisted trafficking prevention programs in Venezuela, the Philippines, Mexico, the Republic of Georgia and supported services for Nigerian and Albanian sex trafficking victims in Italy. The Coalition took a leadership role in drafting the Trafficking Protocol to the United Nations Convention Against Transnational Organized Crime. More recently, the Coalition, together with the European Women's Lobby has spearheaded a project to address gender inequality, the demand for trafficking, and the link between trafficking and prostitution in twelve Central and Eastern European countries contending with escalating rates of sex trafficking.

Both Sanctuary and the Coalition understand sex trafficking to be an acute form of violence against women that often overlaps with and sometimes is coextensive with other practices of gender-based violence, in particular domestic violence and sexual assault. In the cases we have handled, we have seen that sex traffickers and their agents often lure vulnerable women and girls into situations of sex slavery by establishing relationships with them, holding themselves out as boyfriends and protectors. Sometimes, as in *U.S. v. Caretto*, the successful prosecution of a family of sex traffickers from Mexico, traffickers even marry their victims. The modus operandi of domestic sex traffickers, popularly known as pimps, is to enslave vulnerable girls and women through tactics that combine seduction with brainwashing and terrorism. Rarely are these victims recognized for what they are: severely battered women.

Almost all sex trafficking victims are victims of serial sexual assault. For many, sexual assault precedes their entry into sex trafficking; the trauma they have sustained renders them vulnerable to their traffickers, facilitates their traffickers' control, and is exacerbated by the trafficking. For all sex trafficking victims, the sexual exploitation they are subjected to an integral part of the trafficking leaves profound psychic injuries. Sex trafficking victims typically suffer from rape trauma, post traumatic stress disorder, severe depression, acute feelings of worthlessness and shame, memory loss, and/or suicidal ideations and acts. Victims of sex trafficking experience all of the trauma battered women and rape victims sustain, often at significantly higher levels.

These realities have profound implications not only for how we can best assist sex trafficking victims but also for how can we most effectively prosecute their exploiters. The TVPA defines sex trafficking as "the recruitment, harboring, transportation, provision, or obtaining of a person for a commercial sex act." To prosecute a sex trafficker using the TVPA's criminal penalties, however, the government must prove not only that sex trafficking took place but also that the trafficking was carried out through "force, fraud, or coercion." Too often these proof requirements create insurmountable obstacles to the successful prosecution of sex traffickers. In some cases, brutal and exploitive sex traffickers need not resort to force, fraud, or coercion because their victims are so vulnerable, terrified, or traumatized that such conduct isn't necessary to obtain their victims' submission.

Sanctuary represents two Korean immigrant sex trafficking victims whose traffickers are currently on trial in federal court in the Southern District of New York. These traffickers preyed on their victims' poverty and undocumented status, made them endure 14 to 16 hour days of sexual servitude, deprived them of sleep and food, and demanded that they endure sexual intercourse with as many as ten customers a shift. The tactics these traffickers used precisely fit Amnesty International's definition of psychological torture. Although both victims are physically and psychologically devastated by their brutal exploitation, their traffickers are not being prosecuted under the TVPA. Why not? Because the U.S. attorneys prosecuting the case, hardworking and resourceful though they are, are unable to make out the TVPA's proof requirements of force, fraud, or coercion. As a result the traffickers are only facing charges of conspiring to violate the Mann Act and a sentence of a mere three-to-five years in prison.

In another case, Sanctuary represents a sex trafficking victim from Russia. Her trafficking scenario was classic: she answered an ad in a Moscow paper for a babysitting job in New York City, was greeted at JFK airport by traffickers who confiscated her passport and put her into debt bondage, and was then forced into prostitution, where she was passed from trafficker to trafficker. Katerina was so psychologically broken by her abuse at the hands of the first group of traffickers that its successors didn't need to resort to force, fraud, or coercion. When Immigration Customs Enforcement finally busted the brothel in which Katerina was being bought and sold, the only federal crime they could charge her traffickers with was prostitution. Although these traffickers had prostituted Katerina and many others like her, reaped huge profits from their exploitation, and left Katerina drug addicted and suicidal, their sentence was a single year in prison.

In other cases, traffickers use force, fraud, or coercion but their victims are too terrified to testify about it, often because the traffickers threatened to harm family members abroad. The need to prove force, fraud, or coercion makes it all but impossible for any sex trafficking prosecution to go forward without a victim willing and able to take the stand, to testify at length about her abuse and sexual exploitation, and to undergo brutal and humiliating cross-examination. When victims facing such an ordeal refuse to testify, as they often do, prosecutorial strategies to force them to testify often only serve to deepen their trauma and may even result in testimony that is beneficial to the traffickers.

Sex trafficking victims are often put into situations in which their very survival is contingent on their outward compliance with their traffickers' demands. Victims not infrequently have to pose smilingly for pornographic pictures, dance with customers, sign prostitution contracts, and even marry their traffickers, all of which is later used

by defense counsel to prove that the victims were “willing prostitutes,” not trafficking victims. If all that was required was to show proof of sex trafficking itself, not force, fraud, or coercion, such evidence would either be stricken as irrelevant or deemed probative of sex trafficking.

Requiring prosecutors to prove force, fraud or coercion wrongly puts the onus on victims, who must be proved “innocent” of willingly having engaged in prostitution, rather than on traffickers, whose criminal actions should be the focus of prosecutions. Much as prosecutors once had to prove “earnest resistance” in rape cases to show the victim was worthy, prosecutors in sex trafficking cases have to prove force, fraud and coercion to demonstrate the bona fides of the trafficking victims.

Even worse, requiring prosecutors to prove force, fraud or coercion places victims and their families abroad in greater danger. The smartest and most ruthless traffickers realize that using violence and threats of violence brutal enough to terrorize victims into silence is a good business practice. As long as force, fraud and coercion are elements of the offense, the worse traffickers are the more unreachable they remain.

The TVPA’s unnecessarily onerous proof requirements have not only hobbled trafficking prosecutions in the United States. Other countries, most recently Mexico, have adopted federal anti-trafficking laws, modeled after ours, that require proof of force, fraud, or coercion in sex trafficking cases. With some of the most ruthless and brutal trafficking rings in the world, and correspondingly some of the most terrified victims, Mexico needs a law that takes the onus off victims, not one that puts them squarely in the traffickers’ crosshairs.

What is the solution? The force, fraud or coercion requirement of the TVPA is not present in other federal laws that have been used successfully to prosecute sex traffickers. The Mann Act criminalizes anyone who “knowingly persuades, induces, [or] entices . . . an individual to travel in interstate or foreign commerce . . . to engage in prostitution.” Similarly, Title 8 USC Section 1328 of the Immigration Code penalizes “importing and harboring aliens for purposes of prostitution.” Unfortunately the TVPA has all but effectively supplanted these older laws. And even if they were used more frequently, the criminal penalties of these earlier anti-trafficking statutes are not adequate to deter the crime of sex trafficking or give its victims the satisfaction of knowing that justice was served.

While federal prosecutors should be encouraged to dust off and begin to use older laws to prosecute sex traffickers, this country’s most recent and best recognized anti-trafficking initiative—the law that has become the model for anti-trafficking legislation domestically and internationally--must be a more effective deterrent to sex traffickers. The TVPA must be amended to eliminate its unnecessary and onerous proof requirements for federal sex trafficking prosecutions, which only serve to intensify the danger and humiliation of cooperation for victims.

An important postscript: the force, fraud, or coercion requirements that have stymied sex trafficking prosecution at the federal level have also sabotaged state anti-trafficking efforts. How did this happen? A few years after the passage of the TVPA, the Department of Justice held a conference in Tampa, Florida that unveiled a model anti-trafficking law for states. That law made proof of force, fraud, or coercion a requirement for prosecuting sex traffickers. Well over half the states then passed state anti-trafficking, most borrowing heavily from the Justice Department model law. Just as the TVPA came to supplant the Mann Act, new state anti-trafficking laws began to supplant existing laws against pimping. The predictable upshot: a dearth of successful prosecutions under the new state anti-trafficking laws.